

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

UNITED STATES OF AMERICA

v.

DWAIN D. WILLIAMS

Case No. 7:09-CR-8 (WLS)

MOTION IN LIMINE

COMES NOW the Defendant, Dwain Williams, by and through undersigned counsel, and requests this Court to order all parties and witnesses to refrain from referring to the complaining witness as a “victim” and prohibit the use of the word “rape” as a description of an act. As grounds, counsel states as follows:

1. The use of “victim” should be prohibited by the Federal Rules of Evidence. Pursuant to Rule 401 of the Federal Rules of Evidence, “relevant evidence” is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Pursuant to Rule 403 of the Federal Rules of Evidence, relevant evidence maybe excluded “if its probative value is *substantially* outweighed by the danger of unfair prejudice.”

2. The term victim means one that is injured, destroyed, or harmed. By referring to a complaining witness as a “victim,” the Government, and the Court by its approval, tells the jury that this person has been injured and that a crime was committed against the complaining witness. The use of the word “victim,” advises he jury that the Government has already proven an injury or harm of some type and concludes that the complaining witness has been victimized.

3. The jury alone determines whether the complaining witness is a “victim” or not beyond a reasonable doubt. The word “victim” has significant prejudicial effect since the word alone means a wrong-doing. The prejudicial effect substantially outweighs any probative value the term may have.

4. The term “rape” should also be prohibited. Rape is an assault by a person involving sexual intercourse with another without consent. The term rape is a legal conclusion that a crime has been committed. The use of the term “rape” has no probative value. All witnesses should be instructed to describe the conduct as oppose to making legal conclusions. The jury alone determines whether such an act occurred or not. The use of the term “rape” takes the fact-finding job from the jury.

Wherefore, the Defendant respectfully request this Court prohibit all parties and witnesses from using the term “victim” and “rape” though out the trial for the reasons stated herein and above.

Respectfully submitted this the 14th day of July, 2010.

Cynthia W. Roseberry - Executive Director
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By:
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CERTIFICATE OF SERVICE

I, D. Nicole Williams, hereby certify that on July 14, 2009, I electronically filed the foregoing *Motion In Limine* with the clerk of Court using the CM/ECF system which will send notification of such to all counsel of record.

Respectfully submitted,

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